IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.158 OF 1995

Sau.Sukhada Sudhir Mule]
Age 20 years, a resident]
of Ward No.1/288,]
Ichalkaranji, Kolhapur.]..Appellant
Ori.Accused no.2

Versus

State of Maharashtra]
(at the instance of the]
Inspector of Police,]
Ichalkaranji, Police Station]
Kolhapur.]..Respondent

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Mr.Gajendra Jadhav i/b A.P.Mundargi Advocate for appellant.
Mr.A.S.Shitole, A.P.P. for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATE : NOVEMBER 3,2004

P.C.:

1. Through this appeal, the appellant-original accused no.2 challenges the judgment and order dated 28th March, 1995, passed by the learned IInd Additional Sessions Judge and Special Judge, Kolhapur in Special Case No.3 of 1991. By the said judgment and order, the learned Judge has convicted the appellant under Section 7 read with Section 3 of the Essential Commodities Act, 1955 and sentenced

her to S.I. for three months and to pay a fine of Rs.500/- i/d S.I. for fifteen days.

. It may be stated here that the appellant faced the trial along with accused no.1 Dattatraya Vasantrao Kulkarni who was also an employee of Anandi Gas Agency. However, the original accused no.1 came to be acquitted in the said case.

2. Briefly stated the prosecution case is as under:

. That the appellant was an employee of Anandi Gas Agency at Ichalkaranji. The said agency is an authorised agency of Hindustan Petroleum and is doing work of supplying refilled gas cylinders to its consumers for and on behalf of Hindustan Petroleum. The complainant P.W.2 Shashikant Pattekari is resident of Ichalkaranji. The complainant had registered his name as consumer with Anandi Gas Agency. His consumer number is 600618. On 22nd July, 1990, the complainant registered his requisition for supply of refilled gas cylinder with Anandi Gas Agency. Upto 3rd September, 1990, he did not get refilled gas cylinder. He also gave a complaint to the Sub-Inspector as the Gas Agency did not supply him the refilled cylinder. On 16th September, 1990, the complainant made enquiry with

the Gas Agency and found that the Gas Agency had supplied the gas cylinder in his name to some other person on 6th September, 1990 vide receipt no. 10461 and thus according to complainant, Gas Agency had made money by supplying the gas cylinder which was due to the complainant to some other person. Hence, he lodged the complaint. The offence came to be registered on 1st December, 1990 under Section 3 read with Section 7 of the Essential Commodities Act and under Section 420 of IPC. Thereafter, the investigation commenced and after completion of investigation, the charge sheet came to be filed.

3. During the course of trial, plea of accused nos.1 and 2 came to be recorded after explaining them substance of the accusation for the offence under Section 7 read with Section 3 of the Essential Commodities Act for having committed breach of sub-clauses 2 and 3 of clause 6 of the Order 1988. Both the accused pleaded not guilty to the said charge and claimed to be tried.

4. After going through the evidence adduced by the prosecution, the learned Special Judge convicted and sentenced the appellant as stated in para no.1 above. Hence, this appeal.

5. Prosecution has examined P.W.1 Shashikant Pattekari who is the complainant in this case. He has stated that the appellant was an employee of Anandi Gas Agency at Ichalkaranji. The said agency is an authorised agency of Hindustan Petroleum and is doing work of supplying refilled gas cylinders to its consumers for and on behalf of Hindustan Petroleum. He has further stated that he is resident of Ichalkaranji. He has registered his name as consumer with Anandi Gas Agency. His consumer number is 600618. On 22nd July, 1990, he registered his requisition for supply of refilled gas cylinder with Anandi Gas Agency. Upto 3rd September, 1990, he did not get refilled gas cylinder. He also gave a complaint to the Sub-Inspector as the Gas Agency did not supply him the refilled cylinder. On 16th September, 1990, he made enquiry with the Gas Agency and found that the Gas Agency had supplied the gas cylinder in his name to some other person on 6th September, 1990 vide receipt no. 10461 and thus, Gas Agency had made money by supplying the gas cylinder which was due to him to some other person. Hence, he lodged the complaint.

6. Though the complainant P.W.1 Shashikant states that on 22nd July, 1990, he had registered

requisition for refilled gas cylinder in Anandi Gas Agency, in para no.3 of his cross-examination, he admits that appellant did not give him waiting list number. Moreover, P.W.3 Suresh Anna Sabalwadi has held inquiry into the complaint given by P.W.1 Shashikant Pattekari. He has not produced report relating to the said inquiry nor during his deposition could he give the details as to what report he has submitted after holding inquiry. It is pertinent to note that in the Gas Agency, various persons are employed in the office such as Cashier, persons who note down requisitions for refilled gas cylinders, persons who look into the billing and the actual supply of the cylinders etc. From the evidence on record, it is clear that it was not the duty of the appellant to give delivery of the cylinders. As there are various employees engaged in the Gas Agency, in view of the evidence of the prosecution witnesses, it cannot be said as to which of the employees had committed the mischief. As stated earlier, the report prepared after conducting inquiry, is not brought on record so also the Investigating Officer has not attached the waiting list register, waiting list receipt and the office copy of the receipt no.10461 under which the delivery of the gas cylinder had been given to some other person than the complainant. In such case, it

cannot be held that under the said receipt, delivery of the gas cylinder was given to some other person. All these facts have not been proved by the prosecution. In the present case, prosecution has failed to prove that it was the appellant who was responsible for the cylinder not being supplied to the complainant and the cylinder being supplied to some other person. In this view of the matter, I am of the opinion that the appellant is entitled to the benefit of doubt.

. In view of the above, the appeal is allowed. The judgment and order of conviction and sentence dated 28th March, 1995 passed against the appellant by the learned IInd Additional Sessions Judge and Special Judge, Kolhapur in Special Case No. 3 of 1991 under Section 7 read with Section 3 of the Essential Commodities Act, 1955 is set aside. The appellant is acquitted thereunder. The fine amount if any, paid by the appellant, shall be refunded to the appellant. The appellant is on bail. Her bail bonds shall stand cancelled.

[V.K.TAHILRAMANI.J]